IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 435 of 2006.

Date of decision: 14.12.2006.

Kharku Ram ….. **Appellant.**

Vs.

Smt. Lal Dassi …. **Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. G.R.Palsra, Advocate.

For the Respondents :

Surjit Singh, Judge (Oral).

Heard and gone through the record.

2. Appellant- plaintiff filed a suit, seeking declaration that he was owner in possession of 4 Bighas 17 Biswas, 4 Biswansis land, having purchased it from Jai Ram for a consideration of Rs. 500/- in the year 1952, and that ever since its purchase he had been in possession thereof. He alleged that the respondent-defendant without any right, title or interest, threatened to dispossess him. So he filed a suit for declaration and also for permanent prohibitory injunction.

3. Respondent- defendant contested the suit and claimed that she was a co-owner to the extent of one-half share. She pleaded that Jai Ram was only a co-owner in the suit land and his share was

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Whether the reporters of the local papers may be allowed to see the Judgment?

one- half and, therefore, he could not have sold the whole of the suit land.

4. Trial court dismissed the suit, holding that Jai Ram was a co-owner to the extent of one- half share and therefore, the sale made by him in favour of the plaintiff in excess of his one-half share was not valid and was not binding upon the respondent- defendant. Appeal filed against the decree of the trial court stands dismissed by the District Judge.

5. No substantial question of law arises. There is concurrent finding of fact based on proper appreciation of evidence and the reading of pleadings, by the two courts below that Jai Ram, from whom the plaintiff claimed to have derived title, was only a co-owner to the extent of one –half share and therefore, he could not have sold the whole of the suit land to the appellant- plaintiff.

6. Appellant- plaintiff has made an application, under Order 23, Rule 1 (3) of the Code of Civil Procedure, seeking leave of the court to withdraw the suit with liberty to file a fresh one against the present respondent as also the legal heirs of Jai Ram vendor, who himself is stated to be no more. The appellant- plaintiff may, if so, advised, file a fresh suit against the L.Rs of Jai Ram for making up the deficiency in the area of the land sold, on account of Jai Ram having only one-half share in the suit land, from some other land of Jai Ram, but he cannot be permitted to file a fresh suit against the respondent-defendant after having suffered a concurrent finding that the sale made by Jai Ram does not affect the respondent-

defendant's right, title and interest as co-owner to the extent of half share.

7. For the foregoing reasons, appeal and the applications are dismissed.

December 14, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**